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Competition target stays the same; A-76 changes could transform outsourcing

By Jason Peckenpaugh

jpeckenpaugh@govexec.com

The White House has no immediate plans to put more than 425,000 federal jobs for competition from contractors, according to administration officials.

Since March 2001, Bush officials have said competing 425,000 federal jobs—or half of all government jobs considered commercial—was the goal of their competitive sourcing initiative.

"I guess in an ideal world you would want more competition for all jobs, but it's hard to assess how we would go beyond 425,000 in any near-term time frame," said Office of Federal Procurement Policy Administrator Angela Styles to reporters after a speech Monday to the National Council on Public-Private Partnerships, a Washington think-tank.

In their proposed revisions to Office of Management and Budget Circular A-76, Styles and other OMB officials have said that public-private competition should be the rule for all federal employees who perform work considered "commercial," currently 850,000 employees. "All commercial activities performed by government personnel should be subject to the forces of competition," says the revised circular.

But the top goal of the White House competitive sourcing initiative is to compete 425,000 jobs, as it has been since the initiative was launched in March 2001, according to Styles and OMB spokeswoman Amy Call. In his campaign, Bush pledged to let companies bid on one-half of all so-called commercial jobs in government if elected.

When asked if OMB would push agencies to compete more jobs if they meet the 425,000 target, Call declined to speculate.

William Eggers, a privatization expert at Deloitte Research, a Washington consulting group, said the language in the circular reflects OMB's philosophy that all commercial work should face competition. "I think it's

more of an overarching goal and philosophy, but I do think there is a time frame for at least getting to half of that."

Federal unions now consider all federal employees who do "commercial" work—which at some agencies includes accountants, lawyers, and program analysts—to be in jeopardy. "First they say 425,000, then they say 850,000, then it's back to 425,000," said Jacque Simon, public policy director with the American Federation of Government Employees. "We think everybody is at risk."

The competition policy is one of several proposed changes to the circular that, if implemented, could have a dramatic effect on federal outsourcing policy and the Bush competition program. For example, the new circular would open all Inter-Service Support Agreements (ISSAs) between federal agencies to private sector competition, giving private firms access to the multi-billion dollar federal market for support services.

OMB officials have long believed that many ISSAs—pacts in which agencies provide support services to one another—waste taxpayer money, because they are shielded from competition. While ISSAs created after 1997 are already subject to recurring competition from the private sector, service agreements negotiated before 1997 are not.

"Some of these arrangements were entered into in the 1960s, 1970s and 1980s without the benefit of competition," said Jack Kalavritinos, associate administrator for procurement at OMB, at the National Council on Public-Private Partnerships conference Monday. "That needs to change." ISSAs worth less than $1 million would be exempt from the competition requirement.

OMB proposed full ISSA competition during the last revision of Circular A-76, in 1996, but withdrew the proposal in the face of opposition from agencies, including the Defense Department. OMB introduced the same proposal in July 2001, but decided to fold it into the new circular, according to Kalavritinos.

Defense will likely oppose the ISSA provision again because its hands are already full with the Bush mandate to compete thousands of civilian jobs, according to Annie Andrews, assistant director of competitive sourcing at Defense.

"We're going to more than likely non-concur with this aspect as we did last time," she said at the National Council on Public-Private Partnerships conference. "Because you're going to have to choose, OMB, where you want us to put our resources—on the competition of the in-house

[employees] or the competition of the ISSAs—and I'm not sure we have enough resources even at the Defense Department to do both."

In a major change to how agencies comply with the 1998 Federal Activities Inventory Reform (FAIR) Act, the new circular presumes that all federal jobs are commercial in nature, instead of "inherently governmental," which by law cannot be outsourced.

The change is part of the Bush administration's effort to increase the number of commercial jobs in government that are eligible for public-private competition. Styles and other OMB officials have said that agencies leave commercial jobs off their FAIR Act lists, making the lists inaccurate.

Robert Tobias, a professor at American University and former president of the National Treasury Employees Union, said this policy defies the will of Congress.

"The reason Congress legislates in a certain area is because the public has a need that's not being supplied by the private sector," he said during a panel discussion at the National Council on Public-Private Partnerships conference. "So I think the presumption is that it will be performed by federal employees in the federal government. I think we're starting at the wrong end of the continuum by assuming that it is indeed commercial unless proven otherwise."

Stan Soloway, president of the Professional Services Council, an association of government contractors, countered that this approach keeps agencies from tapping private firms for help.

"But the problem is that I can point to dozens and dozens of things the private sector is dying to do for government and it's not getting a chance to do it because of the presumption you're talking about."

"So what?" replied Tobias.

The new circular also revises the definition of "inherently governmental" jobs, which by law cannot be outsourced. While the substance of the definition is essentially the same, the new definition is shorter and contains no examples of inherently governmental work, a staple of the current definition, contained in Office of Federal Procurement Policy letter 92-1.

The rewrite met with praise from Allan Burman, a former director of the Office of Federal Procurement Policy who wrote 92-1. "It seems to me they have hit the key points that came out of that document when I was

doing it, so having a little pride of authorship here, it looks like a reasonable effort to tighten it up," said Burman, who is now president of Jefferson Solutions, a consulting firm based in Washington.

Observers questioned whether agencies have the expertise to manage the contracts that will occur when companies win public-private job competitions.

"I'm not confident that agencies have the ability to effectively manage cost, quality and performance in contracts," said Comptroller General David Walker in a recent interview with *Government Executive*. Several agencies are on the General Accounting Office's High-Risk list of management problems because of weaknesses in contract management, he added.

On Monday, Styles said that some agencies had included contract management strategies in their competitive sourcing plans but added that the problem was beyond the scope of the A-76 rewrite. "Contract management is a much larger problem at the agencies; it's not just a public-private competition issue," she said.

OMB is accepting comments on its proposed revisions to Circular A-76 until Dec. 19. The budget office is urging interested parties to submit comments by e-mail, at A-76comments@omb.eop.gov.